Date stamped MAR 30 1995

1. IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 94-9211-

BERMAN J. WATTS, JR.

Plaintiff-Appellant

versus

MICHAEL P. W. STONE,and or his predecessor, JOHN O. MARSH JR., Secretary of the Army, Headquarters United States Army Aviation Center, Ft.Rucker, Headquarters TRADOC, Army Aviation Board, Directorate of Combat Developments, Ft. Monroe, United States Army Civilian Training Education and Development Student Detachment,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia

---

Before TJOFLAT, Chief Judge, HATCHETT and EMONDSON, Circuit Judges,

BY THE COURT

This appeal is Dismissed for lack of jurisdiction. Appellant's motion to alter or amend judgment was not timely to toll

the time for appealing from the judgment because it was not served within ten (10) business days of the entry of the judgment. Fed.R.Civ.P. 59(e); *Pinion v. Dow Chemical , U.S.A.*, 928 F.2d 1522, 1525 (11th Cir.), *cert. denied* 112 S. Ct. 438 (1991). Accordingly, this notice of appeal filed over 100 days after entry of the

(note: error as on original judgment)

this notice of appeal , filed over 100days after entry of judgment, was untimely. Fed.R.App.P. 4(a)(1).

Contrary to appellant's contention, the "unique circumstances" doctrine is applicable only when the district court takes some affirmative action during the period in which the appellant would ordinarily have to file a notice of appeal and the appellant reasonably relies on that affirmative act in deciding to defer filing the notice of appeal. *See Pinion*, 928 F.2d at 1526-34. Since the district court did not affirmatively mislead appellant into believing his appeal would be timely, the doctrine is inapplicable to this case.

AFFIRMED.

Date stamped JUN 30 1995
IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

No. 94-9211-

BERMAN J. WATTS, JR.

Plaintiff-Appellant

versus

MICHAEL P. W. STONE,and or his predecessor, JOHN O. MARSH JR., Secretary of the Army, Headquarters United States Army Aviation Center, Ft.Rucker, Headquarters TRADOC, Army Aviation Board, Directorate of Combat Developments, Ft. Monroe, United States Army Civilian Training Education and Development Student Detachment,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia

---

Before TJOFLAT, Chief Judge, HATCHETT and EMONDSON, Circuit Judges,

BY THE COURT

Appellant's petition for Rehearing, construed as a motion for reconsideration of March 3, 1995 order dismissing appeal for lack of jurisdiction is denied.

AP2

Stamped filed Aug 29 1994
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BERMAN J. WATTS, JR.	:	
	:	
vs.	:	CIVIL NO.1
	:	:91-CV-0329-ODE
	:	
MICHAEL P.W. STONE and/or his predecessor,JOHN O. MARSH, JR.,Secretary: of the Army, et al.	:	

ORDER

This civil suit is before the court on Plaintiff's Motion to Alter or Amend the Judgment filed August 1,1994. Defendants have filed no response.

The Motion to Alter or Amend the Judgment {#70} having been read and considered, sane is hearby DENIED.

SO ORDERED, this 30 day of August, 1994.

signed
ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

Stamped Entered on Docket
(illegible) 1 1994

AP3